

## REMARKS

Upon entry of the foregoing Amendment, claims 1, 3, 5, 11-12, 30, 34-41, 43, and 46-58 are pending in the application. Claims 1, 3, 5, 11-12, 30, 34-41, 43, and 46-54 have been amended. Claims 4, 10, 31, 42, and 44-45 have been cancelled. Claims 55-58 have been newly added. Applicant believes that this Amendment does not add new matter. In view of the foregoing Amendment and the following Remarks, allowance of all the pending claims is requested.

### EXAMINER INTERVIEW

Applicant thanks Examiner Nguyen for granting Applicant's representative the courtesy of a personal Examiner Interview on February 23, 2010. During the Examiner interview, Applicant's representative discussed potential claim amendments to clarify various distinctions over the references relied upon in the Office Action, as set forth below in further detail.

### REJECTION UNDER 35 U.S.C. § 101

The Examiner has rejected claims 1, 3, 5, 11-12, 30, 34-41, 43, and 46-54 under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. In particular, the Examiner alleges that the method recited in claims 1, 3, 5, 11-12, 30, and 34-39 does not qualify as statutory subject matter because the feature "providing a service over a network having a plurality of network components that support the service" relates to "insignificant extra solution activities and is insufficient to render the otherwise ineligible process claim as statutory," the term "'network' could read over software components or does not have to be an apparatus," and the term "'monitoring agent' . . . appears to be software components."

Solely for purposes of expediting prosecution of this application, and without acknowledging the propriety of the alleged basis for the rejection, Applicant has amended independent claim 1 to further clarify that the method recited therein includes various features that operate "on a computing device," which clearly constitutes a machine, apparatus, or other physical articles. As such, for at least this reason, the method recited in claims 1, 3, 5, 11-12, 30, and 34-39 are directed to statutory subject matter.

Furthermore, with respect to claims 40-41, 43, and 46-54, the Examiner alleges that the system recited therein does not qualify as statutory subject matter because "the body of the claim include method steps [that] use language that is used in the claims of a method," which the Examiner alleges to be precluded by the express language in 35 U.S.C. § 101.

Solely for purposes of expediting prosecution of this application, and without acknowledging the propriety of the alleged basis for the rejection, Applicant has amended independent claim 40 to further clarify that the system recited therein includes "a network having a plurality of network devices," "one or more electronic devices coupled to the network," and "a service analysis system [that] includes one or more processors," which clearly constitute machines, apparatuses, or other physical articles. As such, for at least this reason, the system recited in claims 40-41, 43, and 46-54 are directed to statutory subject matter. Furthermore, Applicant notes that the use of functional language in a system claim does not violate the express language in 35 U.S.C. § 101. *See, e.g., Greenberg v. Ethicon Endo-Surgery, Inc.*, 91 F.3d 1580 (Fed. Cir. 1996) (permitting claim features to be recited in functional terms as long as the features define the bounds on the protection sought without doing so in a vague and ambiguous manner).

Accordingly, for at least the reason that amended claims 1, 3, 5, 11-12, 30, 34-41, 43, and 46-54 recite statutory subject matter, Applicant requests that the Examiner withdraw this rejection of the claims.

#### **REJECTION UNDER 35 U.S.C. § 112, SECOND PARAGRAPH**

The Examiner has rejected claims 40-41, 43, and 46-54 under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In particular, the Examiner alleges that "the claims must be structurally distinguishable from the prior art," wherein features that recite "the manner in which a claimed apparatus is intended to be employed/used, does not differentiate apparatus from the prior art apparatus."

Solely for purposes of expediting prosecution of this application, and without acknowledging the propriety of the alleged basis for the rejection, Applicant has amended

claims 40-41, 43, and 46-54 to further clarify that the system recited therein includes “a network having a plurality of network devices,” “one or more electronic devices coupled to the network,” and “a service analysis system [that] includes one or more processors” that carry out the various functional features further recited therein. As such, because amended 40-41, 43, and 46-54 clearly recite the structural components in the system and the functional features that such structural components perform, the claims are clear and definite.

Furthermore, Applicant notes that the Examiner appears to be conflating criteria for determining whether a claim is indefinite with criteria for determining whether a claim is patentable over the prior art. For example, the Examiner acknowledges that “features of an apparatus claim may be recited either structurally or functionally,” which contradicts the Examiner’s alleged basis for the rejection and the settled law on the issue of indefiniteness. *See, e.g., Greenberg*, 91 F.3d at 1580 (permitting claim features to be recited in functional terms as long as the features define the bounds on the protection sought without doing so in a vague and ambiguous manner). Thus, for at least the reason that claims 40-41, 43, and 46-54 clearly recite the bounds on the protection sought, the claims are clear and definite.

Accordingly, for at least the reason that amended claims 40-41, 43, and 46-54 particularly point out and distinctly claim the subject matter which Applicant regards as the invention, Applicant requests that the Examiner withdraw this rejection of the claims.

### **REJECTION UNDER 35 U.S.C. § 103**

The Examiner has rejected claims 1, 3, 5, 11-12, 31, 34-41, 43, and 46-54 under 35 U.S.C. § 103 as allegedly being unpatentable over U.S. Patent No. 6,446,200 to Ball et al. (“Ball”) in view of U.S. Patent No. 6,115,393 to Engel et al. (“Engel”). This rejection is improper and must be withdrawn for at least the reason that Ball and Engel, either alone or in combination, fail to disclose, teach, or suggest each and every feature of the claimed invention.

More particularly, Ball and Engel, either alone or in combination, fail to disclose, teach, or suggest at least the combination of features that include “executing . . . one or more data mining algorithms to discover a subset of the plurality of component parameters that have a greatest influence on the service parameter,” identifying . . . a function that defines a

relationship between the value for the service parameter and the subset of the plurality of component parameters that have the greatest influence on the service parameter,” and “inferring . . . the value for the service parameter from the monitored values for the subset of the plurality of component parameters [to determine] whether the service conforms to [an] agreed upon service level identified in [a] service level agreement,” as recited in amended independent claim 1, for example.

Rather, Ball generally relates to a system for “collecting and aggregating data from network entities . . . to produce records based on [network flow] information” (Abstract). However, Ball indicates that the system “examines each packet of a network flow that passes through the device associated with the monitor,” whereby Ball describes monitoring network flow information for every device that may support a particular service in the network (e.g., col. 29, lines 5-50). In contrast, independent claim 1 has been amended to recite various features that “discover a subset of [a] plurality of component parameters that [support a particular service],” wherein the discovered subset of the multiple component parameters “have a greatest influence on the service parameter.” Thus, whereas amended independent claim 1 recites features that determine whether a service conforms to an agreed upon service level from “the subset of the plurality of component parameters that have the greatest influence on the service parameter,” Ball monitors every device that may support a particular service in the network. For at least this reason, Ball fails to disclose, teach, or suggest at least the foregoing features recited in amended independent claim 1.

Engel fails to cure the foregoing deficiencies of Ball for at least the reason that Engel similarly relates to a system that monitors every device that may support a particular service in a network. For example, Engel describes “monitoring . . . communications which occur in a network of nodes, each communication being effected by a transmission of one or more packets among two or more communicating nodes” (Abstract). As such, Engel further fails to disclose, teach, or suggest discovering a subset of various component parameters that have a greatest influence on a service parameter to identify a function that can infer whether a service conforms to an agreed upon service level from “the subset of the plurality of

component parameters that have the greatest influence on the service parameter. For at least this reason, Engel fails to cure the foregoing deficiencies of Ball.

Accordingly, for at least the foregoing reasons, Ball and Engel, either alone or in combination, fail to disclose, teach, or suggest each and every feature of amended independent claim 1. The rejection is therefore improper and must be withdrawn.

Independent claim 40 has been amended to include features similar to those set forth in amended independent claim 1. Claims 3, 5, 11-12, 31, 34-39, 41, 43, and 46-54 depend from and add features to one of amended independent claims 1 and 40. Thus, the rejection of these claims is likewise improper and must be withdrawn for at least the same reasons.

#### **NEW CLAIMS 55-58**

As indicated above, the Examiner has failed to establish that Ball and Engel, either alone or in combination, disclose, teach, or suggest each and every feature of amended independent claims 1 and 40. New claims 55-58 depend from and add features to one of amended independent claims 1 and 40. Thus, newly added claims 55-58 are allowable over Ball and Engel for at least the same reasons discussed in further detail above.

## CONCLUSION

Having addressed each of the foregoing rejections, it is respectfully submitted that a full and complete response has been made to the outstanding Office Action. As such, the application is in condition for allowance. Notice to that effect is respectfully requested.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Date: March 10, 2010

Respectfully submitted,

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